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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.S., a Person Coming Under the
Juvenile Court Law.

B208822
(Los Angeles County
Super. Ct. No. CK57465)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Appellant,

and

K.S.,

Minor and Appellant,

v.

DAWN M. and DOUGLAS S.,

Defendants and Respondents.

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen Marpet, Commissioner. Reversed and remanded.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Senior Deputy County Counsel, for Plaintiff and Appellant.

Lori A. Fields for Minor and Appellant K.S.

Rich Pfeiffer for Defendant and Respondent Dawn M.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Respondent Douglas S.

Minor K.S. and the Los Angeles County Department of Children and Family Services (“DCFS”) (collectively “Appellants”) appeal from the juvenile court’s order terminating jurisdiction over K.S. and awarding sole legal and physical custody to his father, Douglas S. (“Father”), and monitored visitation to his mother, Dawn M. (“Mother”). The juvenile court previously declared K.S. a dependent child of the court pursuant to Welfare and Institutions Code section 300, subdivision (j) based on the finding that K.S.’s half-sibling had suffered severe physical abuse while in Mother’s custody and that Mother’s failure to protect the sibling from such abuse placed K.S. at substantial risk of harm.¹ In its custody order and final judgment, the juvenile court ordered that Mother’s contact with K.S. was to be monitored by Father or by a monitor approved by Father at all times, but that Mother was allowed to reside in the same home as Father and K.S. and to have supervised, overnight visitation with the child.

In this appeal, K.S., through his attorney, and the DCFS challenge the portion of the custody and visitation order that permits Mother to reside in the family home and to have monitored overnight visits. Specifically, they contend that an order for monitored visitation is inconsistent with overnight visits and continuous in-home contact, and thus, places K.S. at substantial risk of physical harm. We conclude that the juvenile court abused its discretion in issuing a visitation order that allows Mother to live in, or spend the night at, the family residence in the absence of a finding that K.S. would not be endangered by unmonitored contact with Mother. Accordingly, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

I. Dependency Petition Filed On Behalf Of K.S.

On February 27, 2008, the DCFS filed a section 300 petition on behalf of newborn K.S. on the basis that K.S.’s half-sibling, S.H., had suffered prior physical abuse (§ 300, subds. (a), (b) and (j)). K.S. and S.H. are the children of Mother, but have different

¹ Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

fathers. The petition specifically alleged that Mother had placed S.H. in an endangering and detrimental situation in that S.H., at the age of two months and while in Mother's custody, sustained 14 unexplained bone fractures consistent with inflicted trauma. The petition also alleged that Mother knew or should have known that S.H. was being physically abused but failed to take action to protect the child from harm, and as a result, S.H. received permanent placement services and Mother's parental rights were terminated. The petition asserted that Mother's failure to protect S.H. placed K.S. at substantial risk of harm.

The DCFS removed K.S. from his parents' custody two days after his birth and placed him in the home of a maternal great aunt and uncle. The DCFS also informed the juvenile court that it would seek an order denying family reunification services for Mother so that permanent placement services for K.S. could be initiated immediately. Father was not named in the dependency petition.

II. Dependency Proceedings Involving K.S.'s Sibling

On three occasions, this Court reviewed aspects of the dependency proceedings regarding K.S.'s half-sibling, S.H. (*In re S.H.* (July 24, 2007, B190498) [nonpub. opn.]; *In re S.H.* (May 16, 2006, B187245) [nonpub. opn.]; *In re S.H.* (Sept. 14, 2005, B183391) [nonpub. opn.].) Because the juvenile court's dependency jurisdiction over K.S. was based solely on the physical abuse suffered by his sibling, we describe the prior proceedings involving S.H. in brief:²

S.H. is the daughter of Mother and Mother's former husband, Bryce H. On December 15, 2004, when S.H. was two months old, her parents took her to a hospital where she was diagnosed with a spiral fracture of the left femur. Further medical tests revealed that S.H. had 14 bone fractures in the ribs, arms and legs in various stages of healing. S.H.'s parents denied any physical abuse, but failed to provide the hospital or the DCFS with an explanation for the infant's multiple injuries.

²

We previously granted the DCFS's motion to augment the record in this appeal to include the records from the prior dependency proceedings involving S.H.

On December 17, 2004, the DFCS filed a section 300 petition on behalf of S.H., alleging severe physical abuse by a parent of a child under the age of five (§ 300, subd. (e)). S.H. was detained and placed in the home of her maternal great aunt and uncle. At a contested disposition hearing, the juvenile court denied reunification services to S.H.'s parents (§ 361.5, subd. (b)(5)) and set the matter for a hearing on selection and implementation of a permanent plan for the child. (§ 366.26). The parents sought extraordinary writ relief from this order, which we denied. (*In re S.H.* (Sept. 14, 2005, B183391) [nonpub. opn.])

On September 16, 2005, Mother filed a section 388 petition to present newly obtained evidence concerning the cause of S.H.'s injuries. After the juvenile court denied an evidentiary hearing on that petition, Mother appealed. In a nonpublished opinion, we directed the juvenile court to hold a section 388 hearing on the evidence presented by Mother prior to any section 366.26 hearing on a permanent plan for S.H. (*In re S.H.* (May 16, 2006, B187245) [nonpub. opn.])

The juvenile court thereafter held the section 388 hearing. Although Mother presented several witnesses, her petition rested primarily on the testimony of Jeffrey Pietz, M.D., a pediatrician and neonatologist who testified as an expert. Dr. Pietz opined that S.H. was not abused. He testified that an undefined medical condition (first labeled temporary brittle bone disease, then not named at all), caused perhaps by drugs administered to Mother during pregnancy, Mother's bed rest during pregnancy, Mother's nutritional intake during pregnancy, S.H.'s premature birth, and/or nutritional deficiencies early in S.H.'s life, could have caused S.H. to have weakened bones that were susceptible to the fractures she suffered without any physical abuse. The juvenile court, however, was not persuaded by Dr. Pietz's testimony or by his oft-changing explanation of S.H.'s medical condition. At the conclusion of the hearing, the court denied Mother's section 388 petition on the grounds that she failed to establish a change in circumstances or the existence of new evidence about S.H.'s injuries.

At a separate section 366.26 hearing, the court terminated the parental rights of S.H.'s parents and ordered a permanent plan of adoption for S.H. The court found that,

although the parents had maintained regular visitation with S.H., they failed to show that termination of their parental rights would be detrimental to her well-being. The parents timely appealed the orders denying the section 388 petition and terminating their parental rights. In a nonpublished opinion, we affirmed the juvenile court's rulings. (*In re S.H.* (July 24, 2007, B190498) [nonpub. opn.])

On May 13, 2008, the DCFS filed a status review report regarding S.H. The DCSF reported that S.H. continued to thrive in the home of her prospective adoptive parents, the maternal great aunt and uncle, and that S.H.'s caregivers continued to demonstrate a strong emotional commitment to her. The DCFS also reported that S.H.'s parents were maintaining regular monitored visits with the child on a weekly basis, that the visits consistently went well, and that S.H. had a very loving relationship with both parents. On May 13, 2008, the juvenile court ordered the DCFS to continue providing S.H. with permanent placement services with adoption remaining the appropriate permanent plan.

III. Dependency Proceedings Involving K.S.

A. Detention Hearing

The DCFS received a referral regarding K.S. on the day of his birth. On that date, a hospital social worker contacted the DCFS after Mother told her that a prior DCFS case regarding S.H. had been closed. According to the social worker, Mother was forthcoming about S.H.'s case, but could not explain why she never reunified with the child. The maternal grandfather, who was also present, informed the social worker that the DCFS had "kidnapped the first child," S.H. Both Mother and Father were visibly upset during the discussion, but Father was also observed to be attentive and protective of Mother and K.S.

The DCFS initiated an investigation and conducted interviews with both parents. Mother was asked to explain the events surrounding the DCSF's prior detention of S.H. Mother stated that she took S.H. to the hospital because of a swollen leg, that a doctor said it was a bone disorder, and that "from there it just snowballed." She denied that anyone ever abused S.H., but had no explanation for the child's 14 bone fractures. At the

time of S.H.'s injuries, Mother and S.H.'s father were living with the maternal grandparents, and according to Mother, S.H. had limited contact with anyone apart from these family members. Mother was S.H.'s primary caregiver prior to her removal, but noted that S.H.'s father was "in the home most of the time." Mother indicated that she and S.H.'s father had been divorced since November 2007, and that she had been in a relationship with K.S.'s father for a year. K.S.'s father was in the Marines and stationed at Camp Pendleton, but had regular contact with Mother on the weekends. They planned for Mother and K.S. to live at the maternal grandparents' home after his birth.

In his interview with the DCFS, Father confirmed that he was on active duty in the Marine Corps. He had served in the military for three and a half years and was living in the barracks at Camp Pendleton. He indicated that he did not have current housing for K.S., but was on the waiting list for base housing. When asked about S.H., Father responded that he knew the "whole story." According to Father, Mother "told [him] the Sheriff[s] came and took her out in handcuffs and it was only a broken leg or something about bones breaking. [She] told [him] her daughter [S.H.] had a bone disease."

The DCFS also met with the paternal and maternal grandparents. The paternal grandparents, who were visiting from Ohio, confirmed that they had met Mother, but had minimal contact with her. The maternal grandmother denied that there was any domestic violence or drug or alcohol abuse involving Mother, and denied that S.H. had been physically abused. The maternal grandmother reported that S.H.'s multiple broken bones were the result of a metabolic disorder caused by medication that Mother took during pregnancy.

On February 25, 2008, the DCFS held a team decision making meeting with the parents, the maternal and paternal grandparents, and the paternal great-grandparents. In its Detention Report, the DCSF noted that both parents had been cooperative, but that Mother would be the primary caretaker of K.S. and that she continued to deny that S.H. had been physically abused. Although Father was attempting to stabilize his living situation so that K.S. could stay with him, the DCSF was concerned about Father's ability to secure a home for the child given his active duty in the military. The DCSF also found

that, while family members on both sides were supportive, they appeared to have misinformation about S.H.'s prior injuries. Based on its initial investigation, the DCFS concluded that K.S. was at substantial risk for abuse by Mother and should be detained with the same maternal great aunt and uncle who were caring for S.H.

On February 27, 2008, the juvenile court held an initial detention hearing. Father requested that K.S. be released to him on the grounds that he was a non-offending parent, was actively serving in the military, and had a secret security clearance which required an extensive background check. The court denied Father's request, however, because he did not currently have a place for the child to reside with him. At a contested hearing held the following day, the court found that there was a sufficient showing for K.S.'s continued detention. The court granted unmonitored visitation for Father and monitored visitation for Mother on the condition that Father not be the monitor for Mother's visits. The court also ordered the DCFS to provide both parents with family reunification services, and to meet with Father to assess his progress in making appropriate home and child care arrangements so that K.S. might be released to him. The court set an adjudication hearing for March 27, 2008.

B. Adjudication Hearing

On March 7, 2008, the DCFS released K.S. to Father after confirming that he had obtained an appropriate residence for himself and the child independent from Mother. The DCFS also conducted a criminal background check of both parents which revealed that Father had no criminal record, while Mother had been convicted of a misdemeanor charge of willful cruelty to a child (Pen. Code, § 273a, subd. (b)) in connection with S.H.'s injuries. In March 2008, the DCFS re-interviewed K.S.'s parents for its Jurisdiction/Disposition Report.

In her interview with the DCFS, Mother stated that her goal was to get her son back. She explained that she currently was enrolled in parenting and anger management courses and intended to begin individual counseling. She also confirmed that she had completed a parenting course during S.H.'s dependency, but had discontinued anger management counseling because the case social worker told her that she was not going to

regain custody. According to Mother, she was in the process of appealing the misdemeanor conviction. She indicated that S.H.'s father was never arrested because she had been the child's primary caretaker, but noted that he was a good father to S.H. Mother reported that she was legally married to K.S.'s father, that they have a very good relationship, and that they were doing whatever they had to do to get their family back together.

In his interview, Father stated that Mother had been honest with him about S.H., but that he did not understand what S.H.'s case had to do with K.S. He reported that he had a strong relationship with Mother and that she showed motherly love. Father also indicated that he believed marriage was a commitment and that he should not have to divorce Mother to care for K.S., but he would do so if necessary to protect their child. Father stated, "I will defend my son over anything. This is about protecting my son. Whatever the Court mandates I will do. I am willing to protect my son."

In its Jurisdiction/Disposition Report, the DCFS concluded that K.S. should remain in the home of Father because he was a non-offending parent. The DCFS was concerned, however, about Father's lack of insight into the seriousness of S.H.'s injuries and his inability to comprehend the correlation between S.H.'s case and K.S. The DCFS recommended that Father be provided with family maintenance services and be ordered to complete a parenting program and participate in individual therapy. With respect to Mother, the DCFS concluded that there was a substantial risk to K.S. if he was returned to her custody. The DCFS noted that Mother still had not addressed the issues surrounding S.H.'s injuries nor accepted any responsibility for what happened to S.H. while in Mother's home. Instead, Mother continued to believe that S.H.'s injuries were caused by a medical condition. The DCFS recommended that Mother not be provided with family reunification services, but that she be permitted to continue weekly monitored visitation with K.S.

On March 27, 2008, the juvenile court held the adjudication hearing. Mother waived her right to a trial and agreed to submit the matter on the DCFS's reports. The court sustained the petition under section 300, subdivision (j), and ordered that K.S.

remain released to Father. The court then set the matter for a contested disposition hearing to be held in May 2008.

C. Disposition Hearing

On May 20, 2008, the DCFS submitted a supplemental report assessing the family's progress. Father reported that K.S. was doing well and having daily monitored visits with Mother. Father also indicated that he was attending a parenting program and participating in individual counseling. Father's therapist confirmed his participation in the programs and described Father as "responsible, dependable and reliable." Mother reported that she had completed a 12-week parenting and anger management program and was attending weekly individual therapy. Mother's therapist confirmed her compliance with the programs and described Mother as having "demonstrated her amenability to all of the court ordered classes, openly participating and display[ing] a high level of cooperation in wanting to learn any and all skills involved in parenting and anger management." Mother's therapist also stated that Mother suffered from post traumatic stress disorder related to both children, but that she was amenable to all treatment and had "great insight" into family issues. When asked about Mother's insight into the issues regarding S.H., the therapist reported that Mother believes that S.H. suffers from "brittle bone syndrome" because experts told Mother that S.H. has that medical condition. According to the therapist, Mother also believes that S.H. did not suffer any further bone fractures after being removed from her custody because S.H. is "in remission."

In its supplemental report, the DCFS stated that it continued to have serious concerns about the physical safety of K.S. in the custody of Mother. The DCFS noted that Mother still refused to accept any responsibility for S.H.'s injuries and that she continued to claim that S.H. suffered from brittle bone disease despite the absence of supporting medical evidence. The DCFS maintained its initial recommendation that Mother not receive family reunification services.

On May 20, 2008, the juvenile court held the contested disposition hearing. Father was the sole testifying witness. According to Father, he and Mother were married on

July 21, 2007. They were still married, but were living apart because they believed they had to maintain separate residences in order for K.S. to be released to Father. When asked about his understanding of S.H.'s removal from Mother's custody, Father responded that S.H. was born premature and "due to a brittle bone disease, that she had a case, which was often times misleading and confusing." When asked directly whether he believed Mother hurt S.H., Father stated that he did not know because he was not there. Father testified that he did not believe Mother posed a risk to K.S. because she was a loving mother who had "done everything she has to reunite with her son."

With respect to his future plans, Father indicated that he intended to return to his home state to register for inactive reserve service and then to re-enlist in the Army. He stated that his plan was for K.S. to stay with the paternal grandparents in Ohio while he was in training, and then for K.S. and Mother to reside with him once he was stationed. According to Father, the military base offered 24-hour child care and could assist with any monitored visits between K.S. and Mother. Father testified that he would obey all court orders, including any order concerning monitored visitation. He agreed that, if instructed by the court, he was committed to not allowing Mother to be left alone with K.S. at any time. Father also asserted that he was fully aware of his responsibility to inform all child care providers of any restrictions on Mother's contact with the child.

At the conclusion of the disposition hearing, the court noted that this was a "very difficult case" and that it had decided to issue "an unusual exit order." The court ordered that Father be provided with a copy of the DCFS's Jurisdiction/Disposition Report and that he read and initial every page of that report because it explained the prior judicial findings in the dependency case involving S.H. Once Father complied with that order, the court terminated its jurisdiction pursuant to section 361.2, subdivision (b)(1), and issued a custody order granting sole legal and physical custody of K.S. to Father and monitored visitation to Mother. Mother's visitation would be according to a schedule arranged by the parents and would be supervised by Father or by a monitor approved by Father. The court also specifically ordered that Mother could have overnight visits with

K.S. and could reside in the same home as Father and K.S. on the condition that she never be left alone with the child without prior court approval.

In issuing its custody and visitation order, the juvenile court stated to Father as follows: “It would be almost impossible for me to control what you do when we get out. I’m assuming a mature young man like yourself is going to be out protecting your child, doing everything you can to protect it, and that is what the order of the court is going to be.” The court entered its “Custody Order – Juvenile – Final Judgment” on May 30, 2008. Both K.S. and the DCFS filed timely notices of appeal.³

DISCUSSION

I. Standard Of Review

Where, as here, the juvenile court terminates jurisdiction in a dependency case, it is vested with broad discretionary authority to issue custody and visitation orders. (§ 361.2, subd. (b)(1) [when granting legal and physical custody of a dependent child to a parent, the court “may also provide reasonable visitation by the noncustodial parent”]; § 362.4 [when terminating dependency jurisdiction, the court “may issue . . . an order determining the custody of, or visitation with, the child”]; *In re Chantal S.* (1996) 13 Cal.4th 196, 203-204; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31.) In any custody determination, the primary consideration must be the best interests of the child. (*In re Chantal S.*, *supra*, at p. 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.) The court is not restrained by any preferences or presumptions in issuing its order, but rather, must consider the totality of the child’s circumstances. (*In re Nicholas H.*, *supra*, at p. 268; *In re Jennifer R.*, *supra*, at p. 712; *In re Roger S.*, *supra*, at p. 31.) Indeed, because “the juvenile court . . . has been

³ K.S. also filed a petition for writ of supersedeas ancillary to his appeal, which was joined by the DCFS. On July 8, 2008, this Court granted the petition and stayed the portion of the visitation order permitting Mother to reside in the same home as K.S. or to have overnight, supervised visitation with K.S., pending disposition of this appeal.

intimately involved in the protection of the child, [it] is best situated to make custody determinations based on the [child's] best interests.” (*In re Chantal S.*, *supra*, at p. 206.)

We ordinarily review the juvenile court's custody and visitation orders for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Therefore, “when a court has made a custody determination in a dependency proceeding, “a reviewing court will not disturb that decision unless the [lower] court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.]” (*Ibid.*) ““When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the [juvenile] court.’ [Citations.]” (*Id.* at p. 319.)

II. The Juvenile Court Abused Its Discretion In Issuing The Visitation Order

In this appeal, both K.S. and the DCFS argue that the juvenile court abused its discretion in issuing a custody and visitation order that allows Mother to reside in the same home as K.S. and to have supervised, overnight visits with him. Specifically, they assert that the court's implied finding that Mother continues to pose a risk of physical harm to K.S. such that her contact with him must be monitored at all times is wholly incompatible with overnight visitation or ongoing in-house contact. In presenting this argument, Appellants rely principally on this Court's prior decision in *Los Angeles County Dept. of Children & Family Services v. Superior Court (Ethan G.)* (2006) 145 Cal.App.4th 692.

In *Ethan G.*, we held that, where a juvenile court determines that all contact between a sexually abused child and its offending parent must be monitored to protect the child from further sexual abuse, the court may not permit the offending parent to reside in the family home by designating the non-offending parent as the monitor. (*Ethan G.*, *supra*, 145 Cal.App.4th at p. 694.) Ethan G. was the adopted son of Maurice G. and David P. The DCFS removed seven-year-old Ethan from the custody of Maurice G. after he disclosed that Maurice G. had molested him. (*Id.* at p. 695.) At the disposition hearing, the juvenile court declared Ethan a dependent child of the court based on its finding that Maurice G. sexually abused Ethan on prior occasions. (*Ibid.*) The court

ordered that Ethan remain released to David P. and that Maurice G. be provided with monitored visitation and family reunification services, but prohibited Maurice G. from residing in the family home. (*Id.* at pp. 695-696.) At a subsequent judicial review hearing, the court decided to continue its dependency jurisdiction over Ethan based on its finding that the conditions that necessitated the court's initial intervention still existed. (*Id.* at p. 698.) The court then ordered that Ethan remain in the home of David P., but allowed Maurice G. to return to the family home on the condition that his contact with Ethan be monitored at all times. (*Ibid.*) The DCFS challenged this portion of the court's order in a petition for writ of mandate.

In reviewing the visitation order in *Ethan G.*, we first noted that the juvenile court, in issuing that order, made an express finding that continued jurisdiction was necessary ““because conditions do continue to exist which necessitated this court's initial intervention.”” (*Ethan G.*, *supra*, 145 Cal.App.4th at p. 698.) Because the court's dependency jurisdiction was based solely on the prior sexual abuse of Ethan, that finding necessarily meant that the court had determined that further sexual abuse was likely to occur if it terminated its jurisdiction and allowed Maurice G. to return to the family home without restrictions. (*Id.* at pp. 698-699.) Additionally, we noted that the court made an implied finding that Maurice G. continued to pose a risk of harm to Ethan when it decided in its visitation order that all contact between Maurice G. and Ethan had to be monitored. (*Id.* at p. 699.)

We concluded that, under such circumstances, the juvenile court had abused its discretion in allowing Maurice G. to return to the family home while a substantial danger of further sexual abuse of Ethan still existed. (*Ethan G.*, *supra*, 145 Cal.App.4th at p. 699.) As we explained, “David P. is employed full time; Maurice G. was a stay-at-home parent. Even if David P. and Maurice G. are able to arrange for David P.'s mother or another responsible adult to monitor Ethan and Maurice G.'s interactions during the time David is at work, living together in the family residence will necessarily mean periods exist, even if somewhat brief (for example, when David P. is asleep or showering), when the designated monitor will be unavailable. At least when the threat

to the dependent child is the likely recurrence of sexual abuse, the concept of monitored visitation is fundamentally incompatible with around-the-clock in-home contact.” (*Ibid.*) On that basis, we directed the juvenile court to vacate its order permitting Maurice G. to return to the family home on the condition that all his contact with Ethan be monitored, and to enter a new order prohibiting Maurice G. from living in, or spending the night at, the family residence until the court determined, following an adequate evidentiary hearing, that Ethan would not be endangered by an order allowing Maurice G. to have unmonitored contact with him. (*Id.* at p. 700.)

Recognizing our own inability to predict every variation of family circumstance that might be presented in a dependency proceeding, we expressly declined to hold in *Ethan G.* that “it could never be appropriate to permit an offending parent to live with his or her child on condition that all contact between the two remain monitored.” (*Ethan G.*, *supra*, 145 Cal.App.4th at p. 699.) However, any exception to our holding in *Ethan G.* was intended to be narrow. For example, if dependency jurisdiction were exercised solely based on a showing that the parent was unable to respond to an emergency situation because of a developmental disability (see, e.g., *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136-1137, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6), an order permitting the parent to reside in the same home as the child with supervised visitation could be appropriate.

The present case, however, does not fall within the narrow category of potential exceptions. Here, Mother’s first child, S.H., was permanently removed from parental custody because of the severe physical battering of the child at the age of two months. In ordering that Mother’s visitation with her second child, K.S., be monitored at all times, the juvenile court made an implied finding that K.S. continues to be at substantial risk of physical harm if left alone in Mother’s custody. Under these circumstances, an order permitting Mother to live with the then three-month-old K.S., on condition that all contact between Mother and K.S. be monitored, poses an unacceptable risk of serious physical harm to the child. We therefore conclude that the juvenile court abused its

discretion in issuing a visitation order that allows Mother to reside in the family home and to have monitored overnight visitation with K.S.

III. The Juvenile Court Did Not Exceed Its Jurisdiction In Issuing The Visitation Order

K.S. also contends that the juvenile court exceeded its jurisdiction in issuing the custody and visitation order because the very nature of continuous in-home contact between a child and an offending parent is contrary to the statutory purpose of the dependency scheme. That statutory purpose, as set forth in section 300.2, “is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2.) K.S. claims that the juvenile court exceeded its jurisdiction by using a visitation order to accomplish what it could not otherwise do when a parent has been found to place his or her child at risk of harm. We disagree.

The juvenile court issued its custody and visitation order pursuant to section 361.2. Section 361.2 provides, in pertinent part, that when a juvenile court orders a child removed from the physical custody of his or her parent, it first must determine whether there is a noncustodial parent “who desires to assume custody of the child . . . [and] shall place the child with the parent unless it finds that placement with that parent would be detrimental to the . . . child.” (§ 361.2, subd. (a).) Where the court places the child with the non-offending parent, it may “[o]rder that the parent become the legal and physical custodian of the child . . . [and] may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child.” (§ 361.2, subd. (b)(1).) That is precisely what the juvenile court did here. After ordering the removal of K.S. from the physical custody of Mother, the court placed K.S. with Father as a non-offending parent and then awarded Father sole legal and physical custody of the child with monitored visitation for Mother.

The cases cited by K.S. in support of its jurisdictional argument are inapposite. K.S. relies mainly on three decisions – *Savannah B. v. Superior Court* (2000) 81

Cal.App.4th 158, *In re Andres G.* (1998) 64 Cal.App.4th 476, and *In re Damonte A.* (1997) 57 Cal.App.4th 894 – in which the juvenile court removed a minor from the physical custody of his or her parents, but then immediately ordered that the minor be detained in the offending parent’s home. The appellate court in each case concluded that the juvenile court exceeded its jurisdiction because the dependency statutes “contemplate that removal of the child from the physical custody of the parents will result in some *other* person or entity having physical custody of the child and that the child will be placed in an appropriate home *other* than that of the parent who had custody at the time the petition was filed.” (*In re Damonte A.*, *supra*, at p. 899 [italics in original]; *Savannah B. v. Superior Court*, *supra*, at p. 161 [“The court’s finding . . . [that] ‘there is no reasonable means to protect without removal from parent’s or guardian’s physical custody’ . . . is inconsistent with a simultaneous order granting a 60-day visit with the parent.”]; *In re Andres G.*, *supra*, at p. 483 [“The trial court’s act of finding it necessary to remove physical custody from the parents, place custody with Department and then immediately return the children to the parental home was an act not authorized by the Welfare and Institutions Code”].)

In contrast, the juvenile court in this case did not remove K.S. from Mother’s custody and then immediately place him back in Mother’s home. Instead, the court placed K.S. in the home of Father, who was at all times a non-offending parent. Once the court decided to terminate its jurisdiction over K.S., it issued its order granting Father sole legal and physical custody of the child and granting Mother monitored visitation. Accordingly, although we conclude that the juvenile court’s visitation order constituted an abuse of discretion for the reasons discussed above, such order did not exceed the court’s dependency jurisdiction.

DISPOSITION

The portion of the juvenile court's custody and visitation order that permits Mother to reside in the same home as K.S. and to have supervised, overnight visitation with the child is reversed. The matter is remanded to the juvenile court with instructions to issue a new visitation order prohibiting Mother from living in, or spending the night at, the family residence absent a finding that K.S. will not be endangered by unmonitored contact with Mother.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.